IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No. 88 of 2004

Naresh Kumar ….Applicant

Versus

State of Uttaranchal and others …..Respondents

Hon'ble Irshad Hussain, J.

Heard Sri Parikshit Saini learned counsel for the applicant and learned A.G.A. and perused the record.

This is a petition under Section 482/483 of the Code of Criminal Procedure against the impugned order dated 24.1.2004 passed by the Magistrate concerned in criminal case no. 406/2002 under Section 452, 323, 504 I.P.C. and Section 3(1)(X) of SC/ST Act, P.S. Manglaur, Roorkee, District Haridwar.

Brief facts of the case are that the case was investigated by the police and on completion of the investigation the final report was submitted. Notice was issued and the respondent-complainant filed protest petition. After finding the infirmity in the investigation the impugned order was passed by the Magistrate. This has been challenged on the ground that the same is invalid and without jurisdiction because the learned Magistrate has no jurisdiction to direct the re-investigation on the basis of some infirmity in the investigation.

Having gone through the impugned order, it is evident that the investigation officer has not recorded the statements of the relevant witnesses under Section 161 of Cr.P.C. and that affidavits were taken into consideration by him. No doubt there was basic infirmity in the investigation and the learned Magistrate has the jurisdiction on a protest petition to interfere with the same by passing proper order so that the matter be further investigated in proper and legal way. It appear that the learned Magistrate had intended to have the matter further investigated but went on to pass an order as if the re-investigation was being directed. Considering the infirmity in the investigation under the inherent jurisdiction of the court therefore it may be directed that the matter shall be further investigated by the police. The impugned order shall be

read as such and in view of the infirmity in the investigation there appear to be no merit in this writ petition and the same is liable to be dismissed.

Therefore, the writ petition is dismissed with the directions that the matter shall be further investigated by the police.

Dated 04.03.2004 **(Irshad Hussain, J.)**
Rawat